Act. What amounts to contempt are acts done calculated to obstruct or interfere with the lawful process of the court. See also the speech of Lord Wilberforce in *Raymond* v *Honey*.[5]

The facts set out in the affidavit on behalf of the Malaysian Bar and the report of the tribunal would also seem to contradict the allegations contained in the grounds. The judges went into court at 12.50 pm which only means that the doors of the court were not closed. They sat for about half an hour assisted by the staff of the registry although the Chief Registrar was absent. After the hearing they granted an order which bore the seal of the Supreme Court which only means that the seal was made available and not denied from them. In our view all these would compel us to come to one conclusion only and, that is, the instructions even if issued were never implemented.

Finally there has certainly been an inordinate delay in making the application. The resolution of the Malaysian Bar to institute proceedings for contempt was passed on 19 July 1988. The application for leave was filed on 24 April 1989. There was no explanation for the delay in the affidavit of the secretary of the Bar. The allegation of contempt is a serious matter and should be pursued within a reasonable time. The delay must be explained. In our view a lapse of nearly nine months unexplained in the affidavit is not reasonable. Motion dismissed.

Order accordingly.

Solicitors: *Suhaimi Khor Zulkifli & Chang*; *Lee Perara & Tan*; *Jackson & Masacorale*; *Fernandez & Co*; *Nashir Johal & Co*; *CL Sequerah & Co.*

Reported by *Prof Ahmad Ibrahim*

Malaysian Bar v Tan Sri Dato Abdul Hamid bin Omar (No 2)

SUPREME COURT (KUALA LUMPUR) – CIVIL APPLICATION NO 08-21-89
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND GUNN CHIT TUAN SCJJ
28 APRIL 1989

Civil Procedure – Application for leave to institute committal proceedings – Application for order or direction to Lord President of Supreme Court to advise the Yang di-Pertuan Agung to appoint additional judges of the Supreme Court – Disqualification – Application to stay proceedings pending application to Lord President

In this application the applicant applied for an order or direction that the Lord President of the Supreme Court do advise the Yang di-Pertuan Agung to appoint such person or persons who have held high judicial office in Malaysia and whom the Yang di-Pertuan Agung in his absolute discretion thinks fit to be an additional judge or judges to hear the committal proceedings against the respondent. Alternatively, the applicant sought for an order that the committal proceedings be stayed pending an application to the Lord President for the same purpose.

Held, dismissing the application:

(1) As regards disqualification, the only objection against the judges constituting the Supreme Court would seem to be that they sat to consider the order of prohibition issued against the tribunal to inquire into the conduct of Tun Salleh Abas. The Supreme Court which sat then was only concerned with the legality or propriety of the order of prohibition. They were only concerned with questions of law and not concerned with the circumstances which brought about the committal proceedings.

(2) Under art 122(1A) of the Federal Constitution for the appointment of additional judges, the Lord President has to advise the Yang di-Pertuan Agung and he has to nominate the additional judges. This obviously will not solve the problem posed by the applicant.

(3) The directions or order as requested by the applicant would be in the nature of a mandamus and the Supreme Court being essentially an appellate and a referential court has no jurisdiction to make such an order.

(4) The Supreme Court does not have the power to order or direct the Lord President as to how he should exercise his constitutional functions under art 122(1A) of the Constitution.

(5) There is absolutely no reason for the members of the court to disqualify themselves on the ground of bias or likelihood of bias. There is therefore no reason to consider the alternative ground for stay.

Legislation referred to
Federal Constitution art 122(1A)

Raja Abdul Aziz Addruse (*S Theivanthiran*, *Lee Min Choon*, *Matthias Chang*, *Gurbachan Singh Johal*, *Collin Sequerah* and *Jeffrey Fernandez* with him) for the applicant.
Tan Sri Abu Talib bin Othman, Attorney General, Malaysia (*T Selventhiranathan*, Senior Federal Counsel, with him) for the respondent.

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): The Malaysian Bar took out a notice of motion to move the court for an order or direction that the Lord President of the Supreme Court do advise the Yang di-Pertuan Agong pursuant to art 122(1A) of the Federal Constitution to appoint such person or persons who have held high judicial office in Malaysia and whom the Yang di-Pertuan Agong in his absolute discretion deems fit to be an additional judge or judges of the Supreme Court to hear the committal proceedings against the respondent. Alternatively the Malaysian Bar sought for an order that the committal proceedings be stayed pending an application to the Lord President under the same art 122(1A) of the Federal Constitution for the same purpose.

In the affidavit supporting the notice of motion, the secretary of the Bar Council of the Malaysian Bar gave a summary of the grounds for objecting to all Supreme Court judges from hearing the committal proceedings. The summary of the grounds are contained in para 3 of the affidavit as follows.

> 3 A brief summary of the grounds for objection in relation to the respective Supreme Court judges are given below:
> 3.1 The Honourable Tan Sri Dato Abdul Hamid bin Hj Omar – he is the defendant in this proceedings.
> 3.2 The Honourable Chief Justice of Malaya Tan Sri Datuk Hashim Yeop Abdullah Sani, Dato Harun Mahmud Hashim, Dato Mohamed Yusoff bin Mohamed and Datuk Gunn Chit Tuan – members of the panel of Supreme Court judges who sat at the Supreme Court hearing on the 21st and 22nd July 1988 [*Tun Dato Haji Mohamed Salleh bin Abas* v *Tan Sri Dato Abdul Hamid bin Omar & Ors* [1988] 3 MLJ 149] and who set aside the order of the Supreme Court dated 2 July 1988, the circumstances relating to which are connected to the committal proceedings herein.
> 3.3 The Honourable Mr Justice Tan Sri Datuk Lee Hun Hoe – one of the defendants in the proceedings before the Supreme Court, which resulted in the said order of the Supreme Court of 2 July 1988.
> 3.4 The Honourable Mr Justice Tan Sri Dato Haji Mohamed Azmi bin Dato Haji Kamaruddin and the Honourable Mr Justice Tan Sri Dato Seri Dr Eusoffe Abdoolcader – two of the Supreme Court judges who heard the application and granted the said order of 2 July 1988 in the proceedings which were sought to be prevented by the respondent.
> 3.5 The Honourable Mr Justice Dato Ajaib Singh – the judge in the proceeding which was the subject matter of the application to the Supreme Court resulting in the said order of 2 July 1988.

In para 4 of the same affidavit the secretary of the Bar Council also stated that it would be improper for the Lord President or the Supreme Court judge who is next most senior to him to appoint any High Court judges to hear the committal proceedings.

Firstly, on the question of disqualification. As regards the three of us here the only objection would seem to be that we sat on 21 and 22 July 1988 to consider the order of prohibition issued against the tribunal. The Supreme Court which sat on the two days mentioned was only concerned with the legality or propriety of the order of prohibition. We were only concerned with questions of law and not concerned with the circumstances which brought about the committal proceedings.

Secondly, it would seem clear from the affidavit on behalf of the Malaysian Bar that the applicant also considers that all the judges of the superior courts should be disqualified and that the only solution is to invoke art 122(1A) of the Federal Constitution for the appointment of additional judges of the Supreme Court by the Yang di-Pertuan Agong on the advice of the Lord President. This is an interesting point but fraught with problems. Firstly, art 122(1A) speaks of 'advice' of the Lord President. Therefore the Lord President is required, if he wants the Yang di-Pertuan Agong to appoint additional judges under art 122(1A), to nominate the additional judges. This obviously will not solve the problem posed by the applicant.

We also agree with Mr Sri Ram (who was invited to address the court) that a direction or order as requested by the applicant would be in the nature of a mandamus and the Supreme Court being essentially an appellate and referential court has no jurisdiction to make such an order.

Finally we also do not think that the Supreme Court has the power to order or direct the Lord President as to how he should exercise his constitutional functions under art 122(1A) of the Constitution.

In conclusion we do not consider that we should disqualify ourselves on the ground of bias or likelihood of bias because there is absolutely no reason to do so. As regards the alternative prayer for stay since we are of the view that we are not disqualified from hearing the application for leave, we see no reason to consider the alternative prayer for stay.

Notice of motion is accordingly dismissed.

Order accordingly.

Solicitors: *Suhaimi Khor Zulkifli & Chang*; *Lee, Perara & Tan*; *Jackson & Masacorale*; *Fernandez & Co*; *Nashir Johal & Co*; *CL Sequerah & Co.*

Reported by *Prof Ahmad Ibrahim*

Sabah Banking Employees' Union v Sabah Commercial Banks' Association

SUPREME COURT (KOTA KINABALU) – CIVIL APPEAL NO 501 OF 1987
ABDUL HAMID LP, LEE HUN HOE CJ (BORNEO) AND MOHAMED YUSOFF SCJ
3 NOVEMBER 1988 AND 5 MAY 1989

Administrative Law – Certiorari to quash award of Industrial Court – Proper approach to be adopted in exercising supervisory role in regard to Industrial Court awards – Extent to which awards of Industrial Court are statutorily protected from correction and supervision by High Court – Industrial Relations Act 1967, ss 30 & 33B

In this case negotiations had been conducted between the appellant and respondent for a new collective agreement. The parties reached agreement on all issues except the quantum of retirement benefits. The agreed terms of the collective agree-